Sir Charles Murray-Aynsley, C.J. [delivering the judgment of the Court of Appeal, with which Mathew, C.J. (F.M.) and Brown, J. concurred, said] : — This case raises a point of some practical importance under the Control of Rent Ordinance, 1947 (No. 25 of 1947), namely, whether the protection of the Ordinance extends to sub-tenants where the subletting was not unlawful and no judgment has been obtained against the head tenant. The matter is not free from obscurity. It is clear that the Ordinance was intended to protect, among others, sub-tenants. Where a judgment is obtained against the head tenant the position is quite clear. It cannot be supposed that this protection was intended to be limited to such cases.

I agree with the conclusions reached by the learned Judge and with his reasons. I do not think there is any reason to say anything more. In my opinion this appeal should be dismissed with costs and the deposit paid out to the respondents.

Appeal dismissed.

PUBLIC PROSECUTOR v. BEH YEW SUAN.

[App. Crim. Juris. (Hill, J.) October, 25, 1952]

[Alor Star — Criminal Appeal No. 14 of 1952]

Criminal Procedure Code (Cap. 6), s. 173(h) — Amendment of charge — Duty of Magistrate — Prohibition of Exports (Amendment) Order 1950 — Finance Regulations.

This was an appeal by the Public Prosecutor against the acquittal of the respondent. In the course of the proceedings before the trial Court, the learned President was made aware that Item 2 in the 1st Schedule of the Prohibition of Exports Order, 1949, has been amended by the Prohibition of Exports (Amendments) Order 1950 and that this order was made under the Customs Proclamation. Nevertheless the learned President held that the law applicable was the Finance Regulations Proclamation.

Held that (1) once the attention of the trial Court has been directed, no matter how, to a relevant law or to an amendment, it then becomes the duty of the Court to consider whether its power to amend the charge under s. 173(h) of the Criminal Procedure Code should be exercised; (2) the learned President should have amended the charge in the present case.

Case referred to :—

(1) *Public Prosecutor v. Ishak & Ors.* (1952) M.L.J. 151.

CRIMINAL APPEAL from Sessions Court, Sungei Patani.

F. G. Cooke (Federal Counsel) for the appellant.

R. D. Hume for the respondent.

Cur. Adv. Vult.

Hill, J. : — As argument on the 11th was confined to the question whether the trial judge should have amended the charge in the exercise of his power under section 173 (h) of the Criminal Procedure Code I must deal first with this point.

It is obvious that if the present case is on all fours with that considered by Whitton, J., in *Public Prosecutor v. Ishak & Ors.*[1] the question is already answered.

I quote from the head note of the Kota Bahru Appeal[1]:—

"Held, that the prosecution cannot successfully maintain that a Magistrate had failed in his duty in this matter because he did not make an amendment to a charge which they did not themselves in any way suggest and based on a legal view of the facts quite different from that they themselves have put forward throughout the case."

In the present case it does not appear from the record, and it is not suggested, that the prosecution asked for an amendment, but, and here the difference between the cases arises, the learned President was made aware in the course of the proceedings before him that item 2 in 1st schedule of Prohibition of Exports Order 1949 (L.N. 12/49) has been amended by the Prohibition of Exports (Amendment) Order 1950 (L.N. 333) which defines 'gold' as "Gold : that is gold coin or gold bullion including gold in whatever state or form other than *bona fide* articles of personal jewellery" and that this order was made under section 2 of the Custom Proclamation No. 30/45. Nevertheless the learned President held that the law applicable was the Finance Regulations Proclamation.

In such circumstances I am of opinion that it would be going too far to apply the principles laid down by Whitton, J., on the point and I feel that the present case must be distinguished. I think that once the attention of the trial Court has been directed, no matter how, to a relevant law or, as in the present case, to an amendment, it then becomes the duty of the Court to consider in appropriate circumstances such as existed in the case under review whether its power under section 173 (h) of the Criminal Procedure Code should be exercised.

This was apparently not considered by the learned trial Judge and I am of opinion that he should not only have done so, but should have amended the charge as contended by the learned Deputy Public Prosecutor.

As I indicated in Court, I consider that there was a *prima facie* case for the respondent to answer to the charge, if amended. To avoid any risk of prejudicing the further proceedings I will confine myself to that brief statement in so far as the evidence is concerned.

The appeal is therefore allowed. The charge will be amended as indicated and the matter is referred back to the learned President to call on the respondent to make his statement.

Appeal allowed.